HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL NO.1020 OF 2006

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Between:
Bhooma Laxmamma

..... Appellant

AND

The State Election Commissioner,
3rd Floor, Budda Bhavan,
M.G.Road, Secunderabad
and three others.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Sri.V.Mallik

Counsel for Respondent No.2 : Government Pleader for Panchayat Raj & Rural Development

Dated 11-10-2006

Per Sri G.S.Singhvi, CJ

This appeal is directed against order dated 4.9.2006 passed by the learned Single Judge whereby he declined to entertain the writ petition filed by the appellant questioning the election of respondent No.4 as Sarpanch of the Daddavada Gram Panchayat, Komarole Mandal, Prakasam District.

The main ground on which the appellant questioned the election of respondent No.4 was that the Stage-II Election Officer-cum-Returning Officer, Daddavada Gram Panchayat (respondent No.3) had accepted the application made by his agent for recount of the votes but without undertaking the recount, he declared the result of election.

In the counter filed by respondent No.3, it was categorically averred that till the declaration of result of election, no one filed any application for recount of the votes.

On a consideration of the pleadings of the parties, the learned Single Judge refused to entertain the prayer made by the appellant on the ground that he has an effective alternative remedy by way of an election petition.

We have heard Sri V.Mallik, learned advocate for the appellant and perused the record. In our opinion, the discretion exercised by the learned Single Judge not to entertain the writ petition does not suffer

from any infirmity. Rather, the view taken by him is in consonance with the law laid down by the Supreme Court and this Court in a series of decisions. Without burdening the judgment with plethora of judicial precedents, we may only refer to the recent decision of the Division Bench in **Eppala China Venkateswarlu v. Secretary to Government**[1]. The Division Bench of which one of us (the Chief Justice) was a member reviewed the entire case law on the subject and laid down the following propositions.

1) The word "election" appearing in Article 243-O and the provisions contained in the 1994 Act and the rules framed thereunder bears larger connotation. It embraces and includes all steps commencing from the date of notification by the competent authority, whereby the electorates are called upon to elect Sarpanchas and Ward Members and ending with declaration of result. Reservation of offices of Sarpanch and Wards in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women, preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny of nomination papers and withdrawal thereof, publication of the list of eligible candidates, allotment of symbols, appointment of election agents, the conduct of poll, counting of votes, declaration of results and all other ancillary steps taken for the purpose of holding elections fall within the ambit of the term "election". {**N.P. Ponnuswami v. Returning Officer, Namakkal Constituency**, **Mohinder Singh Gill v. Chief Election Commissioner, Election Commission of India v. Shivaji** and **Election Commission of India v. Ashok Kumar** (supra)}

2) i) The bar contained in Article 243-O, which begins with non-obstante clause, debars all Courts from entertaining any challenge to law relating to delimitation of

constituencies or allotment of seat made or purporting to be made under Article 243-K or election to the Panchayats. This bar also operates against the High Court's power of judicial review under Article 226. (**N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Durga Shankar Mehta v. Raghuraj Singh, Election Commission of India v. Shivaji** and **Election Commission of India v. Ashok Kumar** (supra)}

ii) The proposition contained in clause (i) above is subject to the condition that challenge to the delimitation may be entertained in exceptional cases where no objections were invited and no hearing was given provided that such challenge is made before issue of notification for holding election. {**State of U.P. v. Pradhan Sangh Kshetra Samiti** (supra)}

iii) The bar contained in Article 243-O (b) operates only till the adjudication of election dispute by an adjudicatory forum created by or under any law made by the Legislature of the State. An order made by an adjudicatory forum constituted under the law made by the State Legislature can be called in question by filing a petition under Article 226 of the Constitution.

3) The bar contained in Article 243-O operates at all stages of the election i.e. notification issued by the State Election Commission calling upon the electorate to elect Sarpanches and Ward Members; reservation of offices of Sarpanches in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women; preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny and withdrawal thereof; allotment of symbols; appointment of election agents; counting of votes and declaration of result.

4) The bar contained in Article 243-O (b) does not operate qua challenge to the constitutionality of a statutory provision relating to elections, though, even in such a case, the High Court will be extremely loath to pass an interlocutory order which has the effect of stalling or

jeopardizing the process of election or which may result in the constitutional hiatus on account of indirect violation of Article 243-K (3) read with Article 243-K (1).

5) The observations made in **Harnek Singh v. Charanjit Singh** (supra) have to be read in the light of the law laid down by the Constitution Benches in **N.P. Ponnuswami v. Returning Officer, Namakkal Constitutency**, **Durga Shankar Mehta v. Raghuraj Singh**, **Mohinder Singh Gill v. Chief Election Commissioner** (supra) and by three Judges Bench in **Election Commission of India v. Ashok Kumar** (supra).

6) The High Court may entertain petition under Article 226 of the Constitution if the prayer contained in such petition does not have the effect of interpreting or delaying the process of election {**Election Commission of India v. Ashok Kumar** (supra)}.

By applying the aforementioned propositions to the facts of the case in hand, we hold that the only remedy available to the appellant to question the election of respondent No.4 is by way of election petition and the learned Single Judge rightly refused to entertain the writ petition in view of the bar contained in Article 243-O of the Constitution of India.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2171 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY,J

11.10.2006
msv

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[1] 2006(5) ALT 538 (DB)